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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71793; File No. SR-NASDAQ-2014-026)

March 25, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Program and NBBO Setter Incentive Program under Rule 7014, and to Modify the Rules Governing Fees Assessed for Orders Executed in the NASDAQ Opening Cross under Rule 7018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 13, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to make changes Qualified Market Maker (“QMM”) Program under NASDAQ Rule 7014 and the removal of the NBBO Setter Incentive Program as a separate section thereunder, as well as to modify the rules governing fees assessed for orders executed in the NASDAQ Opening Cross under NASDAQ Rule 7018.

The text of the proposed rule change is available at **Error! Hyperlink reference not valid.**at NASDAQ’s principal office, and at the Commission’s Public Reference

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify NASDAQ Rule 7014 to effect the restriction of NBBO Setter Incentives exclusively to Qualified Market Makers ("QMMs"). In doing so, the Exchange is proposing to incorporate the relevant language from NASDAQ Rule 7014 relating to NBBO Setter Incentives and QMMs (i.e., NASDAQ Rule 7018(g)(3)) into the section relating to QMMs generally (i.e., NASDAQ Rule 7014(e)(1)). The Exchange is also proposing to modify the rules governing fees assessed for orders executed in the NASDAQ Opening Cross and, in particular, to modify the criteria in which executions will be deemed fee liable.

QMM and NBBO Setter Incentive Programs

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away

from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a "QMM MPID"), as described under NASDAQ Rule 7014(e).

Currently, one of these benefits pertains to the credits available under NASDAQ's NBBO Setter Incentive Program. The NBBO Setter Incentive Program was intended to provide an incentive to members to set the NBBO or quote at the NBBO on NASDAQ, with the expectation that the additional competition to set the best prices on NASDAQ would improve the quality of the market. Since the introduction of the incentives, however, NASDAQ has not seen a substantial increase in the amount of competition among firms setting the inside market and, as a consequence, has not witnessed a material improvement in market quality (e.g., as defined by quoted spreads). The outcome of the program has been, instead, a simple increase in the average rebate firms collectively receive for providing liquidity. A member currently receives an NBBO Setter Incentive credit of either \$0.0001 or \$0.0002 per share executed in addition to regularly assessed trading rebates, depending upon certain trading qualifications. Every member is currently eligible to receive at least a \$0.0001 credit as long as that member executes an order that at the time of execution either sets the NBBO or causes the NASDAQ BBO to improve to the NBBO.

The Exchange has observed that for the vast majority of participants these rebates do not provide meaningful incentives to modify behavior, (*i.e.*, participants do not quote more aggressively or increase the frequency with which they execute orders at the

NBBO). As a consequence, NASDAQ has concluded that providing these rebates without tying them to some additional requirement is ineffective and will thus provide NBBO Setter rebates only to members that qualify for the QMM Program.

Therefore, the Exchange proposes to merge the incentives pertaining to the QMM Program in NASDAQ Rule 7014(e) and delete the remaining portions of NASDAQ Rule 7014(f) and (g). The method by which the QMMs will attain the additional rebates (the “Additional Rebate”) in NASDAQ Rule 7014(e)(1) associated with NBBO setting/joining activity will be unchanged. They will be available to those orders under the QMM Program that (a) displayed a quantity of at least one round lot at the time of execution; (b) either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and (c) were entered through a QMM MPID. Note that these conditions are simply a carryover from the pertinent parts of the NBBO Setter Incentive Program currently set forth in NASDAQ Rule 7014(g)(3)(A) – (C), and that remain applicable to the Additional Rebate and will be included in NASDAQ Rule 7014(e)(1).

NASDAQ Rule 7014, as revised, will remain consistent with the current rule in that the current requirement that a QMM may not receive both an ISP credit and NBBO Setter Incentive credit but only the greater credit of the two, will continue just in an updated form. Specifically, NASDAQ Rule 7014(e)(1) will similarly state that if a QMM participates in the ISP, NASDAQ will only pay the greater of any applicable credit under the ISP or the Additional Rebate, but not both. Additionally, Designated Retail Orders will continue to be ineligible for NBBO Setter Rebates.

NASDAQ Opening Cross

The Exchange is proposing three modifications to its fee structure relating to executions in the NASDAQ Opening Cross (the “Open”): (1) to adjust the fee cap governing executions in the Open from \$15,000 to \$20,000; (2) to make the fee cap applicable to all orders in the Open, and not just Market-on-Open and Limit-on-Open (MOO/LOO), Good-till-Cancelled and Immediate-or-Cancel orders; and (3) to eliminate rule language that stipulates that only the buy/sell imbalance of MOO/LOO, Good-till-Cancelled and Immediate-or-Cancel orders are fee liable.

The purpose of the changes above are primarily to rationalize pricing for Imbalance Only orders with pricing for all other executions in the Opening Cross. Imbalance Only orders are orders that, given an imbalance of buy and sell interest in an Opening Cross at the time its [sic] execution, will always buy in the event of a sell imbalance and always sell in the event of a buy imbalance. As a consequence, firms submitting Imbalance Only orders typically act to offset “natural” interest in the auction by acting as counterparties for orders specifically marked with buy or sell requirements. The Exchange has traditionally considered such executions conceptually equivalent to liquidity providing orders during the continuous market, since in both instances the firm submitting such orders are providing a benefit to the market as a whole by increasing the ability of firms to trade into and out of positions at a given price. As such, the Exchange seeks to encourage the use of liquidity providing orders and Imbalance Only orders appropriately.

To that end, NASDAQ is proposing to expand the applicability of the fee cap currently available only to orders other than Imbalance Only orders (i.e., Market-on-

Open, Limit-on-Open (MOO/LOO), Good-till-Cancelled and Immediate-or-Cancel orders) to Imbalance Only orders. By making this modification, the Exchange believes it will encourage continued use of Imbalance Only orders and rationalize pricing for Imbalance Only orders with all other orders. NASDAQ further proposes to increase the value of the fee cap to \$20,000 from \$15,000 in light of the increased pool of orders subject to the cap.

Finally, NASDAQ proposes to remove language that makes fee liable only those orders that represent a net buy and sell imbalance in the opening cross. As with the above, NASDAQ seeks to rationalize pricing for Opening Cross executions, in particular, with the other crossing mechanisms currently available (e.g., the Closing Cross) which do not have such a provision. The Exchange believes that in order to appropriately offset the costs of maintaining the technology and infrastructure of the Opening Cross it must assess fees on all executions that it enables. The restriction to buy sell imbalances is both inconsistent with pricing for other mechanisms and prevents the Exchange from appropriately funding the Opening Cross.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

between customers, issuers, brokers, or dealers.

The proposed changes are reflective of NASDAQ's ongoing efforts to use pricing incentive programs to attract orders that NASDAQ believes will improve market quality. The QMM Program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders.

Generally, NASDAQ seeks to provide customers with rewards that they deem helpful, and to eliminate those that they do not. By reframing and refocusing the NBBO Incentive Program, NASDAQ believes it will be able to further promote these goals by providing better targeted incentives for market participants to achieve these goals. The proposed changes will immediately improve the incentive to participate in the QMM Program (by making NBBO setter/joiner credits exclusively available to QMMs) while eliminating unsuccessful aspects of the NBBO Setter Incentive Program.

Specifically, the proposed changes are consistent with statutory requirements. The proposal to replace in the QMM Program the NBBO Setter Incentive credit of \$0.0002 per share executed with the Additional Rebate for the same amount is consistent with an equitable allocation of fees and is not unfairly discriminatory because the amount of the credit is in essence not being changed and it is continuing to be offered to market participants that make significant contributions to market quality by satisfying the QMM requirements, thereby benefitting other NASDAQ market participants. Additionally, NASDAQ believes that it is an equitable allocation of reasonable fees and is not unfairly discriminatory to convert the restriction on receiving multiple credits currently imposed

on QMMs from participating in the ISP and the NBBO Setter Incentive Program (NASDAQ will pay the greater of any applicable credit), to now applying it to QMMs from participating in the ISP and receiving the Additional Rebate, but not both.

The elimination of NASDAQ Rule 7014(g)(1) and (2) is consistent with a fair allocation of reasonable fees and not unfairly discriminatory since the removal of the rule language pertaining to the incentives, as discussed above, impacts all firms equally (to the extent that their activity would result in receiving a benefit) unless the firm has committed to additional quoting requirements under NASDAQ Rule 7014(e).

The restriction of NBBO Setter Incentives to QMMs is also consistent with a fair allocation of reasonable fees and not unfairly discriminatory since the QMM Program remains open to all members that satisfy the voluntary trading requirements set forth in NASDAQ Rule 7014(e).

The modifications to the Open are consistent with a fair allocation of reasonable fees and not unfairly discriminatory because they are applied equally across all members with absolutely no exclusions. Moreover, the changes bring the fee structure for the Opening Cross in line with the fee structure for other NASDAQ crosses, which are well-understood and accepted by the marketplace. By expanding the fee cap to include Imbalance Only orders, NASDAQ believes its fee structure will be more fair and equitable, in particular by providing a similar benefit for firms that provide a service to the market by offsetting “natural” interest in the Opening Cross that is currently only available to firms trading with non-Imbalance Only orders.

Raising the fee cap from \$15,000 to \$20,000 is consistent with a fair allocation of reasonable fees and not unfairly discriminatory because it impacts only those firms that

trade in the auction, and impacts these firms equally given their usage of the Opening Cross.

The same is true for the elimination of the language stipulating that only the net buy and sell imbalance will be fee liable. This change further improves fairness of the allocation of fees by removing an arbitrary restriction on fee liability that brings fee allocation more in line with actual usage of the Opening Cross.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.⁵ NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the elimination of portions of the NBBO Setter Incentive Program and changes to the QMM Program, as well as the proposed changes to modify the rules governing fees assessed for orders executed in the Open reflect this.

⁵ 15 U.S.C. 78f(b)(8).

The QMM Program is entirely voluntary, and as a consequence members may elect to participate in other incentive programs under which they may receive benefits for improving the market. The very fact that the NBBO Setter Incentive credit continues in the form of the Additional Rebate, is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. In sum, if the changes proposed herein, including the modifications to the fee structure relating to executions in the Open, are unattractive to market participants, it is likely that NASDAQ will lose market share as a result.

Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,⁶ and paragraph (f)⁷ of Rule 19b-4, thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-026 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-026, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

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⁸ 17 CFR 200.30-3(a)(12).